

**JOINT CONCURRING STATEMENT OF  
CHAIRMAN KEVIN J. MARTIN  
AND  
COMMISSIONER KATHLEEN Q. ABERNATHY**

*Re: Clarification of Procedures for Participation of Federally Recognized Indian Tribes and Native Hawaiian Organizations under the Nationwide Programmatic Agreement, Declaratory Ruling*

We support the Commission's goals in this Declaratory Ruling, which interprets and clarifies the application of the Nationwide Programmatic Agreement for Review of Effects on Historic Properties for Certain Undertakings Approved by the Federal Communications Commission (Nationwide Agreement)<sup>1</sup> when a federally recognized Indian tribe or Native Hawaiian organization (NHO) does not timely respond to the good faith efforts of an "applicant" or the Commission to contact the Indian tribe or NHO regarding a proposed communications tower or antenna. While we support the goals of this item, we nevertheless concur in the result.

Since the Nationwide Agreement became effective, a significant backlog of tower referrals has developed at the Commission. We supported several proposals intended to resolve this backlog. We continue to believe that siting of towers or antennas is not a federal or federally assisted undertaking,<sup>2</sup> and we would have preferred that the Commission reconsider its decision on that issue. We also would have preferred an even more streamlined review process that would have allowed construction to proceed even faster. Finally, we supported the "three-strikes" process submitted by CTIA, which was endorsed by industry and the United South and Eastern Tribes,<sup>3</sup> and to which we received no opposition. While we concur in today's ruling, we worry that this process may still add needless layers of bureaucracy to the tower siting process and lead to unnecessary delay.

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<sup>1</sup> 47 C.F.R. Part 1, Appendix B.

<sup>2</sup> See *Nationwide Programmatic Agreement Regarding the Section 106 National Historic Preservation Act Review Process*, WT Docket No. 03-128, Report and Order, 20 FCC Rcd 1073, 1230-32 (2004) (Abernathy, K., dissenting in part, Martin, K., approving in part and dissenting in part).

<sup>3</sup> See Letter from James T. Martin, Executive Director, United South and Eastern Tribes, Inc., to Monica Desai, Acting Bureau Chief, Consumer and Governmental Affairs Bureau, and Catherine Seidel, Acting Bureau Chief, Wireless Telecommunications Bureau, Federal Communications Commission (Aug. 15, 2005).